

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item 5
Agenda ID 13587
RESOLUTION E-4703 (Rev.1)
January 29, 2015

R E D A C T E D
R E S O L U T I O N

Resolution E-4703. Southern California Edison Company requests approval of two renewable energy power purchase agreements with Nicolis, LLC and Tropico, LLC.

PROPOSED OUTCOME:

- This resolution approves cost recovery for the renewable energy power purchase agreements between Southern California Edison Company and Nicolis, LLC and between Southern California Edison and Tropico, LLC. The power purchase agreements are approved without modifications.

SAFETY CONSIDERATIONS:

- The amended power purchase agreements between Southern California Edison Company with Nicolis, LLC and with Tropico, LLC do not result in any incremental safety impacts on the facilities SCE is contracted with, when compared to the previously approved power purchase agreements.

ESTIMATED COST:

- Costs of these power purchase agreements are confidential at this time.

By Advice Letter 3076-E filed on July 11, 2014.

SUMMARY

Southern California Edison Company's renewable energy power purchase agreements with Nicolis, LLC and Tropico, LLC are approved without modification.

Southern California Edison Company ("SCE") filed Advice Letter 3076-E on July 11, 2014, requesting California Public Utilities Commission ("Commission")

review and approval of a Renewables Portfolio Standard (“RPS”) amended power purchase and sale agreement between SCE and Nicolis, LLC (“Nicolis PPA”), and an amended power purchase and sale agreement between SCE and Tropico, LLC (“Tropico PPA”). Nicolis, LLC (“Nicolis”) and Tropico, LLC (“Tropico”) are both Delaware limited liability companies that were originally wholly-owned by Foresight Renewables, LLC (“Foresight” or “Developer”). On May 13, 2014, Foresight assigned 100 percent membership interest to W Power, LLC (“W Power”). As a result, W Power became the parent company of the Nicolis PPA and Tropico PPA.

This resolution approves the Nicolis and Tropico PPAs without modification. SCE’s execution of the Nicolis PPA and Tropico PPA is consistent with SCE’s 2013 RPS Procurement Plan, which the Commission conditionally approved in Decision (“D.”) 13-11-024.¹ Deliveries under the Nicolis PPA and Tropico PPA are reasonably priced and recoverable in rates over the life of the PPAs, subject to Commission review of SCE’s administration of the Nicolis PPA and Tropico PPA. The following table provides a summary of the Nicolis PPA and Tropico PPA:

Seller	Generation Type	Contract Capacity (MW)	Estimated Annual Energy (GWh)	Forecasted Initial Operation Date²	Point of Delivery	Term of Contracts (Years)
Nicolis	Solar PV	20	51.51	December 31, 2015	220 kV side of SCE’s Vestal substation	20
Tropico	Solar PV	14	36.05	December 31, 2015	220 kV side of SCE’s Vestal substation	20

¹ Pursuant to Ordering Paragraph 2 of D.13-11-024, SCE filed its Final 2013 RPS Procurement Plan on December 4, 2013 reflecting revisions to the plan that was submitted on August 28, 2013.

² The PPAs have a commercial operation deadline of March 30, 2016 which differs from the commercial operation date of December 31, 2015.

BACKGROUND

Overview of the RPS Program

The California RPS Program was established by Senate Bill (“SB”) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1X).³ The RPS program is codified in Public Utilities Code Sections 399.11-399.20.⁴ Under SB 2 (1X),⁵ the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that the amount of electricity generated per year from eligible renewable resources be increased to an amount that equals an average of 20% of the total electricity sold to retail customers in California for the period 2011-2013; 25% of retail sales by December 31, 2016; and 33% of retail sales by December 31, 2020.⁶

Additional background information about the Commission’s RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

Overview of the Renewable Auction Mechanism (“RAM”)

On December 18, 2010, the CPUC approved a new procurement mechanism called RAM in D.10-12-048, as modified by Commission Resolutions E-4414 (August 14, 2011), E-4489 (April 19, 2012), E-4546 (November 8, 2012), E-4582 (May 9, 2013), and E-4655 (May 15, 2014). The Commission has ordered the investor-owned utilities (“IOUs”) to procure 1,299 megawatts (“MW”) of system-side renewable distributed generation (for individual projects up to 20 MW in size) through a reverse auction using a standard contract. Of the 1,299 MW authorized, each utility has a separate RAM procurement obligation:

³ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

⁴ All further statutory references to sections refer to the California Public Utilities Code unless otherwise specified.

⁵ SB 2 (1X) becomes effective on December 10, 2011; 90 days after the close of the Legislatures 2011 Extraordinary Session.

⁶ See, SB 2 (1X) § 399.15(b)(2)(B).

420.9 MW for PG&E, 723.4 MW for SCE, and 154.7 MW for SDG&E. To meet these RAM procurement obligations, the Commission ordered the IOUs to hold four auctions over two years and to seek approval of contracts executed from these auctions via Tier 2 advice letters filed with the Commission.

On November 20, 2014, the Commission issued D.14-11-042 in which the Commission adopted a revised RAM that functions as a streamlined procurement process within the annual RPS procurement plan process. The IOUs were directed to explain in their annual RPS procurement plan filings how, if any, proposed procurement would be done using RAM as an optional procurement process to meet an IOU's stated need. The Decision did not impose new capacity targets but did mandate that the IOUs conduct an additional RAM auction (RAM 6) as a transitional procurement process. The intent was to provide smaller renewable generation a procurement opportunity between now and the 2015 annual RPS solicitation when IOUs will be permitted to utilize the revised RAM procurement process.

Additional background information about RAM, including links to relevant Commission decisions and resolutions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/Renewable+Auction+Mechanism.htm>.

SCE's Renewables Standard Contract ("RSC") Program

In 2007, SCE voluntarily created a standard contracting program for small RPS-eligible projects known as the RSC Program. In 2009, SCE made the RSC Program available to any facility with capacity of 20 MW or less that met the eligible renewable energy resource ("ERR") certification criteria established by the California Energy Commission ("CEC"). In D.09-06-018, the Commission accepted SCE's 2009 RSC Program as part of SCE's 2009 RPS Procurement Plan. The 2009 RSC Program offered standardized contracts for projects up to 20 MW priced at the Commission's derived market price referent ("MPR").

The 2010 RSC program instituted several important changes from the 2009 RSC program: it eliminated the use of the MPR to set the contract price and used a reverse auction to select winning projects based on the lowest cost contracts. SCE submitted its 2010 RPS Procurement Plan to the Commission on December 18, 2009 and SCE initiated its 2010 RSC request for offers ("RFO") in September 2010. On December 15, 2011, the Commission issued Resolution E-4445, approving 15 of the 20 RSC contracts. All of the approved RSC contracts

were credited towards SCE's capacity allocation for the RAM program pursuant to D.10-12-048, which authorized all contracts resulting from SCE's 2010 RSC Program and executed prior to the effective date of D.10-12-048, to count in full toward SCE's RAM capacity allocation.

NOTICE

Notice of Advice Letter 3076-E was made by publication in the Commission's Daily Calendar. SCE states that copies of the Advice Letter were mailed and distributed in accordance with Section IV of General Order 96-B and to the service list of Rulemaking 11-05-005.

PROTESTS

SCE Advice Letter 3076-E was timely protested by the Western Power Trading forum ("WPTF") on July 31, 2014. SCE responded to the protest on August 7, 2014.

DISCUSSION

SCE requests approval of two renewable energy power purchase agreements with Nicolis and Tropic.

On November 15, 2010, SCE executed RPS contracts with Nicolis and with Tropic (the "Original Agreements") through SCE's 2010 RSC program. On January 31, 2011, SCE submitted Advice 2547-E seeking approval of 20 RSC contracts resulting from SCE's 2010 RSC program. These 20 RSC contracts included the Original Agreements. On December 15, 2011, the Commission issued Resolution E-4445, approving 15 of the 20 RSC contracts. The Original Agreements were included among the approved RSC contracts. All of the approved RSC contracts were credited towards SCE's capacity allocation for the RAM program pursuant to D.10-12-048.

According to SCE, the sites agreed upon in the Original Agreements required distribution upgrades that made each project uneconomic. Subsequently, Foresight requested to change the site location for each contract. After evaluating several sites, Foresight formally disputed SCE's handling of the proposed site changes and requested mediation on January 14, 2013. As a result of settlement discussions, the parties executed amendments on May 13, 2014. In addition to executing the Nicolis PPA and Tropic PPA, the parties also executed a

Settlement Agreement and Consent to Assignment of Membership Interest. The Consent to Assignment of Membership Interest transfers ownership of Nicolis and Tropicco to W Power, a Diverse Business Enterprise (“DBE”).

Pursuant to the Settlement Agreement and Consent to Assignment of Membership Interest, SCE filed Advice Letter 3076-E on July 11, 2014, requesting Commission review and approval of the Nicolis PPA and Tropicco PPA. The amendments also include change of site, delay in Commercial Operation Deadline (“COD”), decrease in contract price, and updating of other terms and conditions. Details regarding these comparisons are provided in confidential Appendix A.

The following tables provide a general overview of the Nicolis PPA and Tropicco PPAs.

Table 1: Nicolis PPA Overview

Project Name	Nicolis, LLC
Technology	Solar PV
Capacity (MW)	20
Capacity Factor	32%
Expected Generation (GWh/Year)	51.51
Initial Commercial Operational Date	December 31, 2015
Date Contract Delivery Term begins	Commercial Operation Date
Delivery Term (Years)	20
Vintage (New / Existing / Repower)	New
Location (city and state)	Tulare County, CA
Control Area (e.g., CAISO, BPA)	California Independent System Operator ("CAISO")
Nearest Competitive Renewable Energy Zone (CREZ) as identified by the Renewable Energy Transmission Initiative (RETI)	Westlands (CREZ 55)
Type of cooling, if applicable	None

Table 2: Tropico PPA Overview

Project Name	Tropico, LLC
Technology	Solar PV
Capacity (MW)	14
Capacity Factor	32%
Expected Generation (GWh/Year)	36.05
Initial Commercial Operational Date	December 31, 2015
Date Contract Delivery Term begins	Commercial Operation Date
Delivery Term (Years)	20
Vintage (New / Existing / Repower)	New
Location (city and state)	Tulare County, CA
Control Area (e.g., CAISO, BPA)	"CAISO"
Nearest Competitive Renewable Energy Zone (CREZ) as identified by the Renewable Energy Transmission Initiative (RETI)	Westlands (CREZ 55)
Type of cooling, if applicable	None

SCE requests that the Commission issue a resolution, which includes:

1. Approval of the Nicolis PPA and Tropico PPA in their entirety;
2. A finding that Nicolis PPA and Tropico PPA are consistent with SCE's 2013 RPS Procurement Plan;
3. A finding that the Nicolis PPA and Tropico PPA are compliant with the Emissions Performance Standard;
4. A finding that any procurement pursuant to Nicolis PPA and Tropico PPA is procurement from an eligible renewable energy resource for the purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California RPS (Public Utilities Code Section 399.11 et seq.), D.03-06-071, or other applicable law;
5. A finding that the Nicolis PPA and Tropico PPA, and SCE's entry into them, is reasonable and prudent for all purposes, including, but not limited to, cost recovery in rates for payments made pursuant to the Nicolis and Tropico PPAs and administrative costs associated with the Nicolis and Tropico PPAs, subject only to further review with respect to the reasonableness of SCE's administration of the Contract; and
6. Any other and further relief as the Commission finds just and reasonable.

Energy Division evaluated the Nicolis PPA and Tropico PPA on the following criteria:

- Consistency with SCE's 2013 RPS Procurement Plan
- Price reasonableness and value
- Consistency with RPS standard terms and conditions
- RPS portfolio need
- Consistency with Portfolio Content Categories ("PCC") requirements
- Compliance with the interim Greenhouse Gas Emissions Performance Standard ("EPS")
- Independent Evaluator("IE") review
- Procurement Review Group("PRG") participation
- Project viability assessment and development status

Consistency with SCE's 2013 RPS Procurement Plan

SCE's annual RPS Procurement Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources; description of potential RPS compliance delays; status update of projects within its RPS portfolio; an assessment of the project failure and delay risk within its RPS portfolio; and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁷ California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.⁸ The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.

Pursuant to D.13-11-024,⁹ SCE filed its Final 2013 RPS Procurement Plan on December 4, 2013. The Nicolis and Tropico PPAs were executed on May 13, 2014. Therefore, the PPAs should be consistent with the most current RPS Procurement Plan at the time the PPAs were executed, which is the 2013 RPS Procurement Plan.

SCE's 2013 RPS Procurement Plan stated that it would solicit for proposals from ERR generating facilities with, among other characteristics, commercial operation dates and initial delivery dates to SCE on January 1, 2016 or later. SCE asserts that with the amended commercial operation deadlines of March 30, 2016, the Nicolis and Tropico PPAs fit with SCE's 2013 RPS Procurement Plan. Additionally, SCE claims that the Nicolis PPA and Tropico PPA are Category 1 products that are directly interconnected to a California balancing authority, which SCE targeted in its 2013 RPS Procurement Plan. SCE explains that both Nicolis PPA and Tropico PPA are 20-year long term contracts, which contribute towards satisfying SCE's long-term need for renewable energy, as iterated in the 2013 RPS Procurement Plan. For more details on SCE's procurement portfolio needs, refer to the section, "SCE's procurement portfolio need."

⁷ Pub. Util. Code § 399.13(a)(5).

⁸ Pub. Util. Code § 399.13(d).

⁹ Pursuant to Ordering Paragraph 2 of D.13-11-024, which conditionally approved SCE's RPS procurement plan dated August 28, 2013, SCE filed its Final 2013 RPS Procurement Plan on December 4, 2013 reflecting revisions to the plan that was submitted on August 28, 2013.

Nicolis PPA and Tropico PPA are consistent with SCE's 2013 RPS Procurement Plan as approved by D.13-11-024.

Price reasonableness and value

For this Advice Letter, SCE provided the following evaluations: comparison of levelized cost of Nicolis and Tropico PPAs with Original Agreements and evaluation of the Nicolis PPA and Tropico PPA in comparison to the projects selected from SCE's RAM 4 solicitation.

The Nicolis and Tropico PPAs were executed on May 13, 2014. In Resolution E-4582 the Commission mandated that RAM 4 should close by June 28, 2013 and RAM 5 should close by June 27, 2014. Therefore, RAM 4 contracts reflect pricing at the time the contracts were executed and are appropriate comparisons for the Nicolis and Tropico PPAs.

When compared against executed contracts from SCE's RAM 4 solicitation, the value of Nicolis and Tropico PPA compare favorably. The PPAs also compare favorably to the Original Agreements regarding price. Details regarding these comparisons are provided in confidential Appendix A.

Nicolis PPA and Tropico PPA compare favorably on price and value with RAM 4 contracts and the Original Agreements.

Consistency with RPS standard terms and conditions

SCE asserts that the Nicolis PPA and Tropico PPA include the non-modifiable standard terms and conditions for bundled contracts without modification. With respect to the standard term and condition regarding "CPUC Approval", the parties modified this provision to include CPUC Approval of the Amendment instead of the Original Agreement.

Nicolis PPA and Tropico PPA include the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, and D.10-03-021, as modified by D.11-01-025.

RPS procurement portfolio need

The California RPS Program was established by Senate Bill (“SB”) 1078 and was modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.¹⁰ SB2 (1X) established new RPS procurement targets such that retail sellers must procure an average of 20 percent of retail energy sales from January 1, 2011 to December 31, 2013, 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020.¹¹

According to SCE’s 2013 RPS Procurement Plan, SCE’s stated RPS portfolio need falls within Compliance Period 3 (2017-2020). The March 30, 2016 forecasted Commercial Online Deadline of the Nicolis and Tropico PPAs is prior to SCE’s stated need. Therefore, Nicolis and Tropico PPAs meet SCE’s RPS portfolio need.

RPS generation from the Nicolis and Tropico PPAs fit the portfolio need requirements of SCE’s RPS portfolio.

Consistency with Portfolio Content Categories requirements

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program and authorized the Director of Energy Division to require the IOUs to provide information regarding the proposed contract’s portfolio content category classification in each advice letter seeking Commission-approval of an RPS contract. The purpose of the information is to allow the Commission to evaluate the claimed portfolio content category of the proposed RPS PPA and the risks and value to ratepayers if the proposed PPA ultimately results in renewable energy credits in another, less preferred, portfolio content category.

Under the Nicolis and Tropico PPAs, SCE will procure energy (and associated renewable energy attributes via WREGIS certificates) generated from a California-based eligible renewable resource with a first point of interconnection within the CAISO, per the provisions of the contract. The RECs associated with

¹⁰ The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

¹¹ See § 399.15(b)(2)(B), SB 2 (1X).

the electricity from both the Nicolis and Tropicco projects are yet to be delivered and therefore have not been unbundled nor transferred to another owner. Such RECs will be transferred to SCE pursuant to the terms of the Nicolis and Tropicco PPA. Accordingly, SCE asserts that this is a Category 1 transaction pursuant to the RPS Statute and D.11-12-052.

Consistent with D.11-12-052, SCE provided information in AL 3076-E regarding the expected PCC classification of the renewable energy credits to be procured pursuant to Nicolis PPA and Tropicco PPA.

In this resolution, the Commission makes no determination regarding the Nicolis PPA's and Tropicco PPA's PCC classification. The RPS contract evaluation process is separate from the RPS compliance and PCC classification process, which requires consideration of several factors based on various showings in a compliance filing. Thus, making a PCC classification determination in this resolution regarding the procurement considered herein is not appropriate. SCE should incorporate the procurement resulting from the Nicolis PPA and Tropicco PPA and all applicable supporting documentation to demonstrate PCC classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules.

Compliance with the Interim Greenhouse Gas Emission Performance Standards

California Public Util. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.¹² D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.¹³

¹² "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Util. Code § 8340 (a).

¹³ D.07-01-039, Attachment 7, p. 4.

Nicolis PPA and Tropicco PPA meet the conditions for EPS compliance because both contracts are for intermittent generation with a capacity factor less than 60 percent.

Independent Evaluator review

The IE for the 2010 RSC Program was Merrimack Energy Group, Inc. SCE asserts that the IE reviewed email traffic, the draft pro forma RSC contract, and other documents exchanged by the parties. According to SCE, the IE also participated in the PRG Review of the RSC contracts on November 10, 2010. SCE did not consult with the IE prior to the execution of the amended Nicolis and Tropicco PPAs because SCE asserts that the amendments were consistent with modifications of existing contracts and not new procurement. Noting that the price, location, online date, and membership of the LLC owner changed for these PPAs, SCE is strongly urged to utilize an Independent Evaluator for similar transactions in the future.

Consistent with D.06-05-039, an independent evaluator oversaw SCE's original negotiations with Nicolis and Tropicco. SCE did not discuss the amendments with the Independent Evaluator.

Procurement Review Group participation

The PRG was initially established in D.02-08-071 to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.¹⁴ SCE asserts that on September 29, 2010, SCE briefed the PRG concerning the 2010 RSC Program. On November 10, 2010, SCE updated the PRG concerning the status of the RSC contracts, which were then executed on November 15, 2010. SCE did not consult with the PRG prior to the execution of the amended Nicolis and Tropicco PPAs because SCE asserts that the amendments were consistent with modifications of existing contracts and do not constitute new procurement. Noting that the price, location, online date, and

¹⁴ SDG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

membership of the LLC owner changed for these PPAs, SCE is strongly urged to discuss similar transactions with the Procurement Review Group in the future.

Pursuant to D.02-08-071, SCE's PRG participated in the original review of the Nicolis and Tropico PPAs. SCE did not discuss the amendments with the PRG.

Project Viability Assessment and Development Status

Developer experience: On May 13, 2014, W Power became the parent company of the Nicolis and Tropico Projects. Founded in 2011, W Power is a 100 percent female-owned DBE that is in the business of developing, building, owning and operating utility-scale renewable and conventional power generation projects. According to SCE, W Power (and/or its affiliates) own or operate 471 MW of power generation facilities, primarily in California. W Power possesses state and federal certifications as a Women Business Enterprise from the CPUC.

Technology: The Nicolis and Tropico projects will use proven and mature solar PV technology.

Site control and permitting status: The Nicolis and Tropico projects have secured 100 percent site control to support its respective projects including full site and substation access. Additional information regarding site control is included in Appendix A.

Permitting / Certifications Status: Information regarding permitting and certifications status is included in Appendix A.

Interconnection and transmission: Nicolis and Tropico executed a Clustering Large Generator Interconnection Agreement ("CLGIA") on March 17, 2014 with SCE. Additional information regarding transmission for this project is included in confidential Appendix A.

Financing Plan: The projects are expected to be financed through a combination of debt, cash equity, and tax equity. Additionally, both projects are expected to receive Investment Tax Credits.

SCE has provided information regarding the viability assessment and development status of Nicolis PPA and Tropico PPA. SCE asserts these projects are viable.

Safety considerations

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities to ensure the safety, health, and comfort of the public. The safety provisions in the Nicolis and Tropico PPAs are based on SCE's 2010 RSC pro forma. Under the 2010 RSC pro forma, the projects are obligated to operate in accordance with Prudent Electrical Practices.¹⁵

¹⁵ SCE describes Prudent Electrical Practices as follows :

““Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices also includes taking reasonable steps to ensure that: (a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Generating Facility’s needs; (b) Sufficient Operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site; (c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe Operation of the Generating Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools; (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) Equipment is not Operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is

Footnote continued on next page

Based on the information before the Commission, these amended PPAs (Nicolis PPA and Tropico PPA) do not result in any incremental safety impacts on the facilities SCE is operating when compared to the previously approved Original Agreements.

RPS eligibility and Commission approval

Pursuant to Pub. Util. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable “eligibility” language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.¹⁶

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law.”¹⁷

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, neither can the Commission determine prior to final CEC certification of a project, that “any

generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions. “

¹⁶ See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

¹⁷ See, e.g. D.08-04-009 at Appendix A, STC 1, CPUC Approval.

procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of contracts.

WPTF asserts that as “wholly new contracts,” Nicolis and Tropic PPA should not count towards SCE’s RAM procurement obligations.

SCE Advice Letter 3076-E was timely protested by WPTF on July 31, 2014. WPTF asserts that the RAM program does not permit bilateral negotiations and this was upheld in Commission Resolution E-4598, approved on June 27, 2013.¹⁸ WPTF correctly asserts that the RAM program does not permit bilateral negotiation.

However, the Nicolis and Tropic PPAs are amended RSC contracts, not RAM contracts. Additionally, while D.10-12-048 allowed RSC contracts to count towards toward SCE’s RAM capacity allocation, it never opined on whether these contracts were subject to negotiation or not. Therefore, the “non-negotiable” clause of RAM contracts does not apply to RSC contracts.

WPTF’s protest is denied because Nicolis and Tropic PPAs are amended RSC contracts, not RAM contracts, and shall continue to count towards SCE’s RAM procurement obligations.

WPTF asserts that approval of the Nicolis and Tropic PPAs should be subject to the same criteria that would apply to any bilateral contract that SCE would execute in the context of the 2013 RPS program.¹⁹

¹⁸ WPTF protest at 3.

¹⁹ WPTF protest at 2.

WPTF's protest is moot. The Nicolis and Tropico PPAs are amended contracts and not bilateral contracts.

The Nicolis and Tropico PPAs were reviewed using Commission approved standards of review.²⁰ Earlier in this resolution, it was established that Nicolis and Tropico PPAs meet SCE's RPS Procurement Portfolio Need; are consistent with SCE's 2013 RPS Procurement Plan, and are reasonable and compare favorably with RAM 4 contracts. Furthermore, SCE provided information regarding the viability of the PPAs and the consistency of PPAs with Commission decisions. SCE provided updated values regarding the renewable net short, project's net market value, and project viability score. Therefore, Nicolis and Tropico PPAs have been reviewed appropriately.

WPTF's protest is denied because Nicolis and Tropico PPAs are amended contracts and have been reviewed according to Commission adopted standards of review.

WPTF asserts that the Nicolis and Tropico PPAs should be compared to RAM 5 bids.²¹

In Resolution E-4582 the Commission mandated that RAM 4 should close by June 28, 2013 and RAM 5 should close by June 27, 2014. SCE asserts that the Nicolis and Tropico PPAs were executed on May 13, 2014. Therefore, based on the timing of the execution of contracts, RAM 4 is the appropriate comparison to determine reasonableness of Nicolis and Tropico PPAs.

WPTF's protest is denied because the Nicolis and Tropico PPAs were compared to the most recent market pricing at the time of their execution, which was the price of RAM 4 executed contracts.

Confidential Information

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market

²⁰ PUC §§ 8340 and 8341, D.11-12-052, D.06-05-039, D.02-08-071

²¹ WPTF protest at 3.

sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on December 22, 2015. No comments were received.

FINDINGS AND CONCLUSIONS

1. The Nicolis PPA and Tropic PPA are consistent with SCE's 2013 RPS Procurement Plan, as approved by D.13-11-024.
2. Nicolis PPA and Tropic PPA compare favorably with RAM 4 contracts and the Original Agreements.
3. The Nicolis PPA and Tropic PPA include the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009 and D.10-03-021, as modified by D.11-01-025.
4. RPS generation from the Nicolis and Tropic PPAs fit the portfolio need requirements of SCE's RPS portfolio.
5. Consistent with D.11-12-052, SCE provided information in Advice Letter 3076-E regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the Nicolis PPA and Tropic PPA.

6. The Nicolis PPA and Tropico PPA meet the conditions for EPS compliance because the projects provide generation with a capacity factor of less than 60 percent.
7. Consistent with D.06-05-039, an Independent Evaluator oversaw SCE's original negotiations with Nicolis and Tropico. SCE did not discuss the amendments with the Independent Evaluator.
8. Pursuant to D.02-08-071, SCE's Procurement Review Group participated in the review of the original Nicolis PPA and Tropico PPA. SCE did not discuss the amendments with the Procurement Review Group.
9. SCE asserts that the Nicolis and Tropico projects are viable and will provide renewable energy according to the terms and conditions in the Nicolis PPA and Tropico PPA.
10. Based on the information before the Commission, Nicolis PPA and Tropico PPA do not result in any incremental safety impacts on the facilities SCE is contracted with compared to the previously approved Original Agreements.
11. SCE Advice Letter 3076-E was timely protested by the Western Power Trading Forum on July 31, 2014.
12. SCE responded to the protest on August 7, 2014.
13. WPTF's protest is denied because the Nicolis and Tropico PPAs are amended RSC contracts, not RAM contracts, and shall continue to count towards SCE's RAM procurement obligations.
14. WPTF's protest is denied because the Nicolis and Tropico PPAs are amended contracts and have been reviewed according to Commission adopted standards of review.
15. WPTF's protest is denied because the Nicolis and Tropico PPAs were compared to the most recent market pricing at the time of their execution, which was the price of RAM 4 executed contracts.
16. Payments made by SCE under the Nicolis PPA and Tropico PPA are fully recoverable in rates over the life of the PPAs, subject to Commission review of SCE's administration of the PPAs.

17. Procurement pursuant to the Nicolis PPA and Tropico PPA is procurement from eligible renewable energy resources for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
18. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under these PPAs to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with these PPAs.
19. The confidential appendices, marked "[REDACTED]" in the public copy of this Resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
20. AL 3076-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison's Advice Letter 3076-E, requesting Commission review and approval of a renewable energy power purchase agreement with Nicolis, LLC, and a renewable power purchase agreement with Tropico, LLC, is approved without modification.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on January 29, 2015; the following Commissioners voting favorably thereon:

TIMOTHY SULLIVAN
Interim Executive Director

Confidential Appendix A

Evaluation Summary of the Nicolis and Tropico PPAs

[REDACTED]